



compensation be awarded to petitioner. Respondent concluded that petitioner suffered a Table brachial neuritis and stated that there was not a preponderance of the evidence that the brachial neuritis was due to factors unrelated to the vaccination. See Respondent's Rule 4 report at 4. A damages Order was issued on November 21, 2013.

On March 16, 2015, respondent filed a Proffer on Award of Compensation ("Proffer"). Respondent proffers that based upon her review of the evidence of record, petitioner should be awarded the following items of compensation: (1) Life Care Plan: respondent proffers that petitioner be awarded all items set forth in the life care plan illustrated by the chart attached to the Proffer at Tabs A and B; (2) Lost Future Earnings: the parties agree that petitioner will be able to engage in gainful employment and that petitioner is not entitled to future lost earnings; (3) Pain and Suffering: respondent proffers that petitioner should be awarded \$145,000.00, in actual and projected pain and suffering, (4) Past Unreimbursable Expenses: respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$6,559.10, and (5) Medicaid Lien: petitioner represents that there are no outstanding Medicaid liens related to her vaccine-related injury. Petitioner agrees with the proffered award for each item of compensation.

Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer. Pursuant to the terms stated in the attached Proffer, the undersigned awards the following:

- A. **A lump sum payment of \$162,850.10, in the form of a check payable to petitioner** representing life care expenses for Year 1 (\$11,291.00), past unreimbursed expenses (\$6,559.10), and pain and suffering (\$145,000.00), and
- B. An amount sufficient to purchase an annuity contract, subject to the conditions described in the Proffer and the attachments to that Proffer.

Proffer ¶ II.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** herewith.<sup>3</sup>

**IT IS SO ORDERED.**

s/ Nora Beth Dorsey  
Nora Beth Dorsey  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF THE SPECIAL MASTERS

_____	)	
ELIZABETH JOHNSON,	)	
	)	
Petitioner,	)	
	)	No. 13-389V
v.	)	Special Master Moran
	)	ECF
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES	)	
	)	
Respondent,	)	
_____	)	

**RESPONDENT'S PROFFER ON DAMAGES**

Respondent submits the following recommendations regarding items of compensation to be awarded to petitioner under the Vaccine Act.

**I. Items of Compensation**

**A. Life Care Items**

Respondent engaged life care planner Linda Curtis, RN, MS, CCM, CNLCP, and petitioner engaged Maureen Clancy, RN, BSN, CLCP, to provide an estimation of Elizabeth Johnson's future vaccine-injury related needs. All items identified in the agreed life care plan dated February 4, 2015, are supported by the evidence and are illustrated by the chart entitled Tab A: Summary of Life Care Items.<sup>1</sup> Respondent proffers Elizabeth Johnson ("petitioner") should be awarded all items of compensation that are set forth in the agreed life care plan and illustrated by the chart attached as Tab A. Petitioner agrees. Respondent further proffers that the appropriate growth rate for life care items of compensation should be four percent (4.0%) for

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<sup>1</sup> The chart at Tab A illustrates the annual benefits as contained in the life care plan. The annual benefit years run from the date of judgment up to the first anniversary of the date of judgment and every year thereafter up to the anniversary of the date of judgment.

non-medical items and six percent (6.0%) for medical items, compounded annually from the date of judgment, as set forth in Tab B: Annuity Funding Portfolio. Petitioner agrees.

B. Lost Earnings

The parties agree that based upon the evidence of record, Elizabeth Johnson will be able to engage in gainful employment. Therefore, respondent proffers that Elizabeth Johnson is not entitled to receive future lost earnings compensation provided for under the Vaccine Act, 42 U.S.C. §300aa-15(a)(3)(A). Petitioner agrees.

C. Pain and Suffering

Respondent proffers that petitioner should be awarded \$145,000.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

D. Past Unreimbursed Expenses

Evidence supplied by petitioner documents her expenditure of past un-reimbursable expenses related to her vaccine-related injury. Respondent proffers that the petitioner is entitled to past un-reimbursed expenses in the amount of \$6,559.10. Petitioner agrees.

E. Medicaid Lien

Petitioner represents that there are no outstanding Medicaid liens related to her vaccine-related injury.

F. Attorney's Fees and Costs

This proffer does not address final attorneys' fees and costs. Petitioner is entitled to reasonable attorneys' fees and costs, to be determined at a later date upon petitioner filing substantiating documentation.

## **II. Form of the Award**

The parties recommend that the compensation provided to petitioner for her future medical care needs should be made through a combination of a one-time cash payment and future annuity payments as described below, and request that the special master's decision and the Court's judgment reflect the following items of compensation.<sup>2</sup>

Respondent proffers and petitioner agrees that an award of compensation include the following elements:

A. A lump sum payment of \$162,850.10, representing life care expenses for Year 1 (\$11,291.00), past un-reimbursed expenses (\$6,559.10), and pain and suffering (\$145,000.00), in the form of a check payable to petitioner.

B. An amount sufficient to purchase an annuity contract,<sup>3</sup> subject to the conditions described below, that will provide payments for the life care items contained in the life care plan, as illustrated by the chart at Tab A, attached hereto, and paid to the life insurance company<sup>4</sup> from

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<sup>2</sup> Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

<sup>3</sup> In respondent's discretion, respondent may purchase one or more annuity contracts from one or more life insurance companies.

<sup>4</sup> The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

- a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;
- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

which the annuity will be purchased.<sup>5</sup> Compensation for Year Two (beginning on the first anniversary of the date of judgment) and all subsequent payments shall be provided through respondent's purchase of an annuity, which annuity will make payments directly to the petitioner only so long as he is alive at the time a particular payment is due. The "annual amounts" set forth in Tab B describe the total year sum to be paid and do not require that the payment be made in one single payment.

The parties agree that petitioner is a competent adult and that no guardians/conservators of her estate will be required.

1. Growth Rates

The benefits illustrated in the chart at Tab B that are to be paid through annuity payments should grow as follows: four percent (4.0%) for all non-medical items, and six percent (6.0%) for all medical items, compounded annually from the date of judgment. Petitioner agrees.

2. Life-contingent Annuity

Petitioner will continue to receive the annuity payments for future medical care from the Life Insurance Company only so long as she is alive at the time that a particular payment is due. Written notice to the Secretary of Health and Human Services and the Life Insurance Company shall be made within twenty (20) days of petitioner's death.

**III. Summary of Recommended Payments Following Judgment**

- A. Lump Sum paid to Petitioner: **\$162,850.10**
- B. An amount sufficient to purchase the annuity contract described above in section II. B.

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<sup>5</sup> Petitioner authorizes the disclosure of certain documents filed by the petitioner in this case consistent with the Privacy Act and the routine uses described in the National Vaccine Injury Compensation Program System of Records, No.09-15-0056.

Respectfully submitted,

BENJAMIN C. MIZER  
Acting Assistant Attorney General

RUPA BHATTACHARYYA  
Director  
Torts Branch, Civil Division

VINCENT J. MATANOSKI  
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/s/ Claudia B. Gangi  
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P.O. Box 146  
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Washington, D.C. 20044-0146  
Tel.: (202) 616-4138

Dated: March 16, 2015

PET: Elizabeth Johnson  
D.O.B. 06/29/1983

TAB A

DATE: 02/27/15  
TIME: 03:55 PM

SUMMARY OF LIFE CARE ITEMS - AGREED LIFE CARE PLAN dated 2/04/2015

ITEM OF CARE		Insurance	Medical Care	Ancillary Services	Medical Equipment	Medications	Supplies	Home Services	Transportation	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0 and 6.0% ITEMS & APPLYING THE GROWTH RATE
GROWTH RATE		6.0%	6.0%	6.0%	6.0%	6.0%	4.0%	4.0%	4.0%			
AGE	YEAR											
32	2015	1,250.00	218.30	1,159.00	1,053.68	57.15	561.33	4,341.00	471.07	3,738.13	5,373	9,112
33	2016	1,250.00	192.40	1,056.00	683.90	57.15	156.62	4,341.00	179.20	3,239.45	4,677	8,298
34	2017	1,250.00	212.40	876.00	683.90	57.15	156.62	4,341.00	173.14	3,079.45	4,671	8,512
35	2018	1,250.00	162.40	876.00	683.90	57.15	156.62	4,341.00	173.14	3,029.45	4,671	8,862
36	2019	1,250.00	182.40	876.00	683.90	57.15	156.62	4,341.00	171.31	3,049.45	4,669	9,312
37	2020	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	9,196
38	2021	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	9,634
39	2022	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	10,094
40	2023	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	10,577
41	2024	0.00	6,510.20	876.00	683.90	57.15	156.62	4,341.00	171.31	8,127.25	4,669	20,376
42	2025	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	11,616
43	2026	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	12,175
44	2027	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	12,762
45	2028	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	13,378
46	2029	0.00	1,010.20	876.00	893.75	57.15	156.62	4,341.00	171.31	2,837.10	4,669	14,499
47	2030	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	14,705
48	2031	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	15,419
49	2032	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	16,169
50	2033	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	16,957
51	2034	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	17,786
52	2035	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	18,656
53	2036	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	19,571
54	2037	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	20,532
55	2038	0.00	1,010.20	876.00	683.90	57.15	156.62	4,341.00	171.31	2,627.25	4,669	21,543
56	2039	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	22,837
57	2040	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	23,968
58	2041	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	25,157
59	2042	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	26,407
60	2043	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	27,722
61	2044	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	29,106
62	2045	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	30,561
63	2046	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	32,092
64	2047	0.00	1,010.20	876.00	683.90	114.30	156.62	4,341.00	171.31	2,684.39	4,669	33,702
65	2048	0.00	202.04	842.40	952.67	114.30	142.63	6,811.00	171.31	2,111.40	7,125	40,438
66	2049	0.00	202.04	842.40	722.29	114.30	42.63	6,811.00	171.31	1,881.03	7,025	40,294



PET: Elizabeth Johnson  
D.O.B. 06/29/1983

TAB A

DATE: 02/27/15  
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SUMMARY OF LIFE CARE ITEMS - AGREED LIFE CARE PLAN dated 2/04/2015

ITEM OF CARE		Insurance	Medical Care	Ancillary Services	Medical Equipment	Medications	Supplies	Home Services	Transportation	TOTALS of Items with a 6.0% Growth Rate	TOTALS of Items with a 4.0% Growth Rate	TOTALS OF 4.0 and 6.0% ITEMS & APPLYING THE GROWTH RATE
GROWTH RATE		6.0%	6.0%	6.0%	6.0%	6.0%	4.0%	4.0%	4.0%			
AGE	YEAR											
67	2050	0.00	202.04	842.40	722.29	114.30	42.63	6,811.00	171.31	1,881.03	7,025	42,179
68	2051	0.00	202.04	842.40	722.29	114.30	42.63	6,811.00	171.31	1,881.03	7,025	44,155
69	2052	0.00	202.04	842.40	722.29	114.30	42.63	6,811.00	171.31	1,881.03	7,025	46,228
70	2053	0.00	202.04	598.40	722.29	114.30	42.63	6,811.00	171.31	1,637.03	7,025	46,168
71	2054	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	69,542
72	2055	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	72,612
73	2056	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	75,822
74	2057	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	79,179
75	2058	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	82,690
76	2059	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	86,362
77	2060	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	90,203
78	2061	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	94,220
79	2062	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	98,423
80	2063	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	102,820
81	2064	0.00	202.04	448.40	722.29	114.30	34.99	11,765.00	138.44	1,487.03	11,938	107,420
		6,250.00	38,188.18	39,113.80	35,657.64	4,343.25	6,313.67	313,534.00	8,515.14	123,552.87	328,362.82	1,800,049.49
		1.38%	8.45%	8.66%	7.89%	0.96%	1.40%	69.38%	1.88%			100.00%

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Johnson AGREED LC Plan Rev3 02 26 15.xls

## ANNUITY FUNDING PORTFOLIO

AGREED LIFE CARE PLAN dated 02/04/2015

## 4.0 and 6.0% GROWTH RATES

DATE: 02/27/15  
TIME: 03:55 PM

Case No: 13-389V  
PET: Elizabeth Johnson  
D.O.B. 06/29/1983

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
<b>Settlement Item</b>	<b>TOTAL</b>	<b>ANNUAL</b>	<b>CASH &amp;</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUITY</b>	<b>ANNUAL</b>	<b>CUMULATIVE</b>
<b>Starting Amount</b>	<b>MEDICAL</b>	<b>STRUCTURED</b>	<b>ANNUITY</b>	<b>1,576</b>	<b>1,209</b>	<b>4,856</b>	<b>3,391</b>	<b>33,560</b>	<b>SAFETY</b>	<b>SAFETY</b>
<b>Inflation Factor</b>	<b>CARE NEEDS</b>	<b>SETTLEMENT</b>	<b>LUMP</b>	<b>6.00%</b>	<b>6.00%</b>	<b>4.00%</b>	<b>4.00%</b>	<b>4.00%</b>	<b>MARGIN</b>	<b>MARGIN</b>
<b>Beginning Year</b>	<b>2015</b>	<b>BENEFITS</b>	<b>SUMS</b>	<b>2016</b>	<b>2016</b>	<b>2016</b>	<b>2048</b>	<b>2054</b>	<b>2015</b>	<b>2015</b>
<b>Ending Year</b>	<b>2064</b>			<b>LIFE</b>	<b>2053</b>	<b>LIFE</b>	<b>2052</b>	<b>LIFE</b>	<b>2064</b>	<b>2064</b>

AGE	YEAR	TOTAL NEEDS	S/S TOTAL	Cash & Lump Sums	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Safety Margin	Cum.Safety Margin
32	2015	9,112	11,291	11,291						2,179	2,179
33	2016	8,298	7,641		1,576	1,209	4,856			-657	1,523
34	2017	8,512	8,002		1,671	1,282	5,050			-510	1,013
35	2018	8,862	8,381		1,771	1,358	5,252			-481	533
36	2019	9,312	8,779		1,877	1,440	5,462			-533	0
37	2020	9,196	9,197		1,990	1,526	5,681			1	1
38	2021	9,634	9,635		2,109	1,618	5,908			1	1
39	2022	10,094	10,095		2,236	1,715	6,144			1	2
40	2023	10,577	10,578		2,370	1,818	6,390			1	2
41	2024	20,376	20,845	9,760	2,512	1,927	6,646			468	471
42	2025	11,616	11,617		2,663	2,043	6,912			1	471
43	2026	12,175	12,176		2,822	2,165	7,188			1	472
44	2027	12,762	12,762		2,992	2,295	7,476			1	473
45	2028	13,378	13,379		3,171	2,433	7,775			1	474
46	2029	14,499	14,026		3,361	2,579	8,086			-474	0
47	2030	14,705	14,706		3,563	2,733	8,409			1	1
48	2031	15,419	15,420		3,777	2,897	8,745			1	2
49	2032	16,169	16,170		4,004	3,071	9,095			1	3
50	2033	16,957	16,958		4,244	3,256	9,459			1	3
51	2034	17,786	17,787		4,498	3,451	9,837			1	4
52	2035	18,656	18,657		4,768	3,658	10,231			1	6
53	2036	19,571	19,572		5,054	3,877	10,640			1	7
54	2037	20,532	20,533		5,358	4,110	11,066			1	8
55	2038	21,543	21,544		5,679	4,357	11,508			1	9
56	2039	22,837	27,282	4,675	6,020	4,618	11,969			4,445	4,454
57	2040	23,968	23,724		6,381	4,895	12,447			-244	4,210
58	2041	25,157	24,898		6,764	5,189	12,945			-259	3,951
59	2042	26,407	26,133		7,170	5,500	13,463			-274	3,677
60	2043	27,722	27,432		7,600	5,830	14,002			-291	3,386
61	2044	29,106	28,798		8,056	6,180	14,562			-308	3,078

# ANNUITY FUNDING PORTFOLIO

AGREED LIFE CARE PLAN dated 02/04/2015

4.0 and 6.0% GROWTH RATES

DATE: 02/27/15  
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Case No: 13-389V  
PET: Elizabeth Johnson  
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		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Settlement Item		TOTAL	ANNUAL	CASH &	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUITY	ANNUAL	CUMULATIVE
Starting Amount		MEDICAL	STRUCTURED	ANNUITY	1,576	1,209	4,856	3,391	33,560	SAFETY	SAFETY
Inflation Factor		CARE NEEDS	SETTLEMENT	LUMP	6.00%	6.00%	4.00%	4.00%	4.00%	MARGIN	MARGIN
Beginning Year		2015	BENEFITS	SUMS	2016	2016	2016	2048	2054	2015	2015
Ending Year		2064			LIFE	2053	LIFE	2052	LIFE	2064	2064
AGE	YEAR	TOTAL NEEDS	S/S TOTAL	Cash & Lump Sums	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Deferred Annuity	Safety Margin	Cum.Safety Margin
62	2045	30,561	30,234		8,539	6,551	15,144			-327	2,752
63	2046	32,092	31,746		9,052	6,944	15,750			-346	2,406
64	2047	33,702	33,335		9,595	7,361	16,380			-367	2,039
65	2048	40,438	38,399		10,171	7,802	17,035	3,391		-2,039	0
66	2049	40,294	40,294		10,781	8,270	17,717	3,527		0	0
67	2050	42,179	42,287		11,428	8,766	18,425	3,668		108	108
68	2051	44,155	44,382		12,113	9,292	19,162	3,814		227	335
69	2052	46,228	46,586		12,840	9,850	19,929	3,967		358	693
70	2053	46,168	45,475	698	13,610	10,441	20,726			-693	0
71	2054	69,542	69,542		14,427		21,555		33,560	0	1
72	2055	72,612	72,612		15,293		22,417		34,902	0	1
73	2056	75,822	75,823		16,210		23,314		36,298	0	1
74	2057	79,179	79,180		17,183		24,246		37,750	0	2
75	2058	82,690	82,690		18,214		25,216		39,260	0	2
76	2059	86,362	86,362		19,307		26,225		40,831	0	2
77	2060	90,203	90,203		20,465		27,274		42,464	0	2
78	2061	94,220	94,220		21,693		28,365		44,163	0	3
79	2062	98,423	98,423		22,995		29,499		45,929	0	3
80	2063	102,820	102,820		24,374		30,679		47,766	0	3
81	2064	107,420	107,420		25,837		31,906		49,677	0	2
ITEMIZED TOTALS		1,800,049	1,800,052	26,424	430,182	164,308	708,169	18,367	452,602	2	2

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